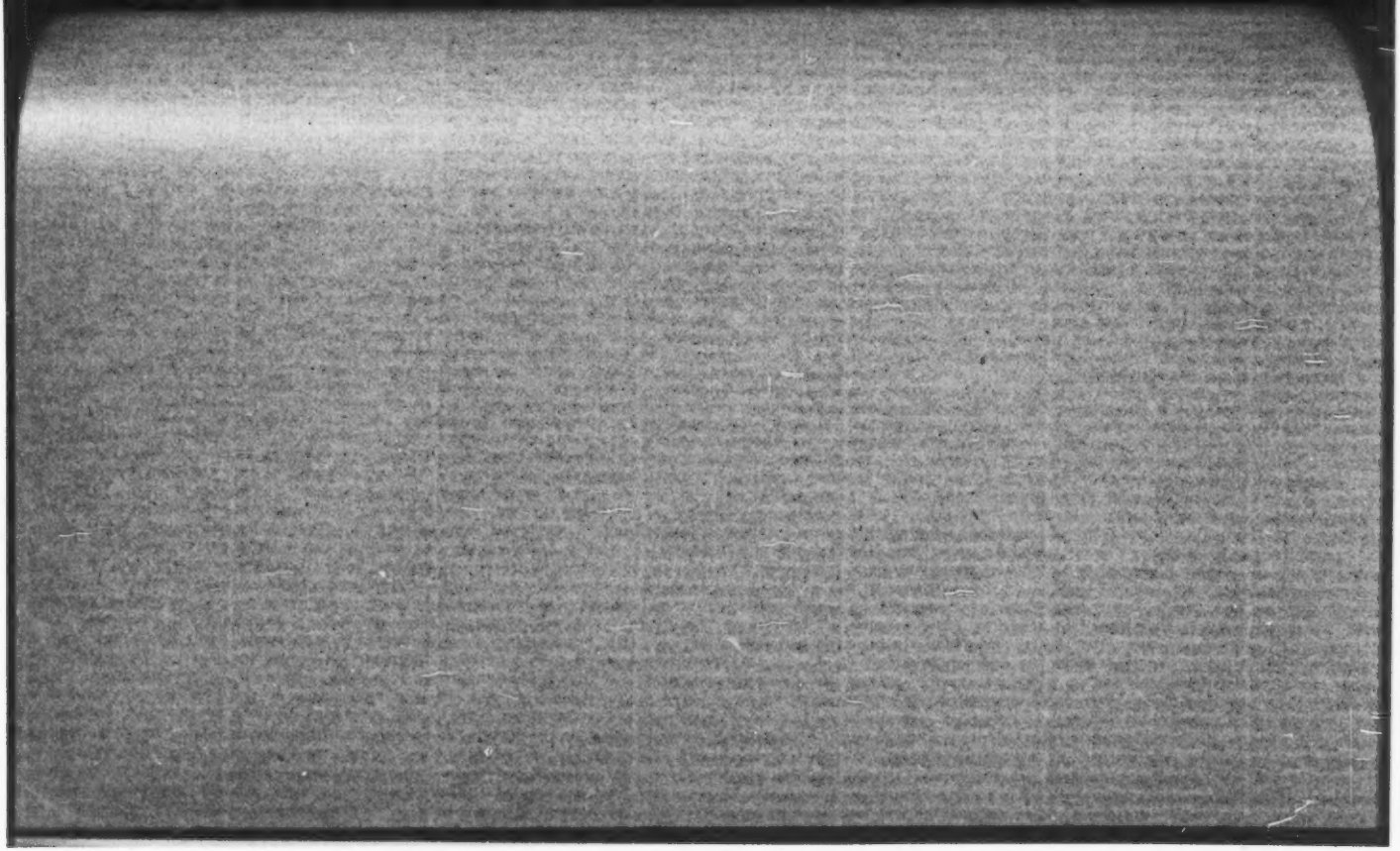

Office Supreme Court U. S.
FILED
DEC 13 1900
JAMES H. McKENNEY,
Clerk

26169

No. 281.
Motion for Leave to file Bond.

Filed Dec. 13, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 281.

THE CITY OF NEW ORLEANS, PETITIONER,

vs.

ANN WARNER ET ALS., RESPONDENTS.

FRANK B. THOMAS,
Assistant City Attorney,

BRANCH K. MILLER,
Solicitors for City of New Orleans

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 12-13-1900

26170

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 281.

THE CITY OF NEW ORLEANS, PETITIONER,

vs.

ANN WARNER ET ALS., RESPONDENTS.

Now comes the City of New Orleans, by Frank B. Thomas and Branch K. Miller, its solicitors, and considering the following stipulations and agreements consented to and signed by solicitors for respondents, to wit:

1st. That found on page 145 of the record, filed March 24, 1900, consenting to certain changes being made in respondents' exceptions to the master's report herein, in which the title of this suit is given as "John G. Warner *vs.* The City of New Orleans."

2d. That found on page 148 of the record, stipulating that certain offerings of defendant should be omitted from the transcript for the appeal taken by respondents from the circuit court to the court of appeals of the fifth circuit, in which the following language (page 148) is used:

"It is agreed that in making up the transcript for the *appeal from the decree entered herein on the 26th day of March, 1900, in favor of the Warner heirs*, John Crossley & Sons, Limited, Wilder & Co., F. J. Gasquet, Suffolk National Bank, Mrs. F. N. Butler, Mrs. Mary E. Taliaferro, John J. Donaldson, and Mrs. Eliza J. Lytle, that the clerk may omit therefrom the following offerings by defendant:"

3d. That found on pages 152 and 153, stipulating that the petition, answer, and bill of costs, part of the claim of Wilder & Company, were duly offered in evidence before the master, in which said agreement the title of this suit is set out as "City of New Orleans, appellant, *vs.* John G. Warner *et als.*, appellees," and which is signed by the solicitors of respondents as "solicitors for appellees."

4th. The stipulation and agreement found on pages 155 and 156 of the record, to the effect that the certified copy of the transcript of the record of this cause, already at the making of said agreement on file in this court, should be taken and considered as a return to the writ of certiorari herein granted, in which said agreement the title of this cause is set out as "The City of New Orleans, appellant, *vs.* Ann Warner *et als.*, appellees," and which said agreement is signed by the solicitors for respondents as "attorneys for Ann Warner *et als.*"

26171

And considering further the order for the writ of certiorari, to be found on page 165 of the record, by which it is declared that the court is informed that there was pending in the court of appeals for the fifth circuit a suit "in which The City of New Orleans is appellant and Ann Warner, Joanna McCrossin, Mary E. Warner, and Harry Warner, sole heirs-at-law of John G. Warner, deceased, *et als.* are appellees;" and considering that all of said agreements and stipulations were executed and signed by solicitors for appellees long subsequently to the making of Ann Warner, Joanna McCrossin, Mary E. Warner, and Harry Warner, sole heirs of John G. Warner, deceased, parties to this suit in the place and stead of John G. Warner:

And considering further the decisions of this court in the cases of Bigler *vs.* Waller, 12 Wall., 143–148; Shepperd *vs.* Pepper, 133 U. S., 626–644, 645, and Edmunson *vs.* Bloomshire, 7 Wall., 306–311:

The said City of New Orleans moves that it be allowed to furnish a bond for its appeal herein taken from the circuit court of the United States for the eastern district of Louisiana to the court of appeals for the fifth circuit, in favor of Ann Warner, Joanna E. McCrossin, Mary E. Warner, Harry Warner, and John J. Donaldson, in such an amount as may be sufficient to respond to the costs incurred by the said parties and within such delay as the court may fix, the said bond to have all the effect as a bond filed and approved by the judge of said circuit court on the day the said appeal herein was taken, if, in the judgment of the court, the said appeal has not already been sufficiently taken, allowed, and perfected by the allowance of the appeal in open court by

the said circuit court by its order, found on page 149 of this record, and the filing and approval by the judge of said circuit court, found on pages 152 and 153 of the record.

FRANK B. THOMAS,
Assistant City Attorney.

BRANCH K. MILLER,
Solicitors for City of New Orleans.

Office Supreme Court, U.S.
FILED
DEC 5 1900
JAMES H. McKENNEY,
Clerk.

No. 281.

Acts of Louisiana.

Filed Dec. 5, 1900.

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 281.

THE CITY OF NEW ORLEANS,

PETITIONER,

versus

ANN WARNER, ET ALS.,

RESPONDENTS.

Acts of the Legislature of Louisiana, Referred to in the Above Cause.

J. G. HAUSER, PRINTER, 402 CAMP STREET.

26174

ACT NO. 30.

AN ACT

To provide for the drainage of New Orleans.

WHEREAS, The proper and efficient drainage of the city of New Orleans is of paramount importance to the sanitary and commercial interests of the city, as also of the State of Louisiana; and whereas, the Mississippi and Mexican Gulf Ship Canal Company are prepared to immediately undertake the work with the only kind of machinery adapted thereto and now ready for use, and to prosecute the same with energy and economy to completion, therefore—

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That the Mississippi and Mexican Gulf Ship Canal Company, a corporation now existing and domiciled in the city of New Orleans, be and is hereby authorized and empowered to excavate drainage canals and build protection levees within the present corporate limits of New Orleans and Carrollton, under the conditions and with the stipulations hereinafter expressed.

SEC. 2. *Be it further enacted, etc.,* That the said Mississippi and Mexican Gulf Ship Canal Company shall be authorized and empowered to dig a canal, and with the earth removed from the same to build outside of said canal a protection levee, in the rear of the city of New Orleans, and near the shore of Lake Pontchartrain; the exact location of the said canal and levee, and of all canals dug and levees built by the said company, to be designated and fixed by the Board of City Administrators, and the title to the lands necessary for said works to be procured and held, for the benefit of the city of New Orleans, by the Board of Administrators of the city of New Orleans; the said lake shore canal to be not less than sixty-five feet wide on the surface, and fifteen feet deep in the middle, with proper slope of the sides, the said canal or canals along the lake shore to serve as a reservoir for draining the city of New Orleans and the lands in the rear of the city, the drainage to be pumped from the canal over into the lake, and the said protection levee to be not less than one hundred feet wide,

and of sufficient height to completely protect the city from overflow from Lake Pontchartrain.

SEC. 3. *Be it further enacted, etc.,* That said company shall also be authorized and empowered to excavate canals of the dimensions, and at such localities as may be fixed by the Board of Administrators of the city of New Orleans, which shall fully drain the area bounded by the protection levees herein contemplated and the Mississippi river, and connect with the drainage canals now located in the said area.

SEC. 4. *Be it further enacted, etc.,* That the said company shall also be empowered and authorized to build a canal and protection levee below the city of New Orleans to connect the lower end of the protection levee, along the lake, with the Mississippi, of a sufficient size to fully protect the city from overflow, and on a line to be designated by the Board of Administrators; and to construct a like canal and protection levee above the city, the dimensions and locality in like manner to be designated by the said Board of Administrators; the object to these two canals and protection levees to be the protection from overflow of the areas between the Mississippi river and Lake Pontchartrain, above the New or company canal, and below the Carondelet canal.

SEC. 5. *Be it further enacted, etc.,* That the said Mississippi and Mexican Gulf Ship Canal Company shall be authorized and empowered to dig all the smaller canals, required for the drainage of New Orleans and the lands in the rear of the said city, of the dimensions of ten feet or more than ten feet in width.

SEC. 6. *Be it further enacted, etc.,* That the Board of Administrators shall be required, and it is hereby made their duty, immediately after the passage of this act, to locate the lines of the canals and protection levees, specified in the various sections of this act, in time to prevent delay in the prosecution of the work on the part of the said company. The Board of Administrators are also required to build and run all the pumps and drainage machines necessary to lift the drainage water from the said canal or canals over into Lake Pontchartrain, and moreover to keep the water in the canals in process of excavation, so far as practicable, at the proper level for the work of excavation, and at the same time assist the drainage of the adjacent lands; and should the City Council fail to locate the lines of said canals and protection levees above specified, the city of New Orleans is hereby made liable to the said company for the damages resulting from such delay.

26173

SEC. 7. *Be it further enacted, etc.,* That said Mississippi and Mexican Gulf Ship Canal Company shall be required to have ready for work, within fifteen days after the passage of this act, machinery of sufficient power to excavate at least twenty-five thousand (25,000) cubic yards per month, and to move the same the distance required to build the protection levee, and to increase as soon as practicable their machinery to the capacity of at least fifty thousand cubic yards per month.

SEC. 8. *Be it further enacted, etc.,* That at the end of every month it shall be the duty of the City Surveyor of New Orleans, or an engineer appointed, by the Board of Administrators for that purpose, to examine the work done by the said Mississippi and Mexican Gulf Ship Canal Company, during said month, and upon the measurement of the width and depth of the canal, canals or parts of canals dug, and protection levees built, certify as to the number of cubic yards excavated and the number of cubic yards of protection levees built during the said month. It shall be the duty of the Administrator of Accounts, on the presentation to him of the said certificate of the City Surveyor or engineer appointed by the Board of Administrators, by the President of the said Mississippi and Mexican Gulf Ship Canal Company, to draw a warrant or warrants on the Administrator of Finance, in payment of the work so done, at the rate of fifty (50) cents per cubic yard of excavation, and fifty (50) cents per cubic yard for the protection levee, the said warrants to be of such denomination as may be required by the President of the said company. These warrants it shall be the duty of the Administrator of Finance to pay on presentation to him, in case there be any funds in the city treasury to the credit of the said Mississippi and Mexican Gulf Ship Canal Company; but should there not be sufficient funds to cash the said warrant or warrants, then the Administrator of Finance is hereby required to indorse upon the same the date of presentation, after which date the said warrant or warrants shall bear interest at the rate of eight per cent. per annum until paid, which condition shall be set forth in the form of the said warrant or warrants.

SEC. 9. *Be it further enacted, etc.,* That in order to provide funds for the payment of the work to be done by the said company, the three boards of draining commissioners for the draining districts of Orleans and Jefferson, established under the acts of March 18, 1858, of March 17, 1859, and the several amendments thereto, and any and all other person, persons, or corpora-

tions, who may have them in possession, shall transfer to the Board of Administrators of New Orleans *all moneys, assessments and claims of drainage in their hands or under their control, all titles to real estate, all books, plans, tableaus, judgments in favor of commissioners, the office furniture of said drainage commissioners,* a true statement of the claims of said drainage commissioners against the city, to be adjudicated and settled out of the money collected by the city, and everything pertaining to said draining districts; that the Board of Administrators of New Orleans, be and are hereby subrogated to all the rights, powers and facilities possessed and enjoyed by the commissioners of the several draining districts, or of any other corporation charged with the duty of drainage and leveeing within the limits of the city of New Orleans and Carrollton; that the Board of Administrators be and are hereby authorized and directed to collect from the holders of property within the said districts the balance due on the assessments, as shown by the books of the first, second and third drainage districts, under the acts of March 18, 1858, that of March 17, 1859, and the several supplementary and amendatory acts thereto, *which said assessments are hereby confirmed and made exigible, at such time and in such manner as the Board of Administrators may designate; provided, that the said board shall collect the assessments herein authorized in time to provide for the payment of the warrants to be issued to the said company at the date of their issue; also, to make assessments of two mills per superficial foot in those parts of the three draining districts, as existing under, and created by, the acts of March* 18, 1858, *and of March* 17, 1859, *and amendments thereto, and on such other lands as are brought within the protection levees contemplated by this act, where no assessments have been made; and to execute and enforce the same as provided for by the several acts of the Legislature, creating and regulating said boards of draining commissioners; provided,* that all money or moneys received by the said Board of Administrators from the said commissioners of the drainage districts, either from the sale of property received from the said commissioners, from the collection of claims for drainage now due, from the collection of drainage assessments, and from any of the sources of revenue contemplated by the provisions of this section of this act, *be placed to the credit of the Mississippi and Mexican Gulf Ship Canal Company, and held as a fund to be applied only to the drainage of New Orleans and Carrollton, in accordance with the provisions of this act; and that all*

property, not money, so received, shall be held in trust for the payment of said Mississippi and Mexican Gulf Ship Canal Company, and ultimately for the benefit of New Orleans, should the same not be required for the work of drainage; and provided, further, that the rights, powers and faculties possessed and enjoyed by said Board of Administrators of New Orleans, relative to drainage, shall be so construed as not to conflict with the rights, powers and faculties acquired by the said company, in excavating canals and building levees, as stipulated in the various sections of this act.

SEC. 10. *Be it further enacted, etc.,* That all acts and parts of acts in conflict with, or inconsistent with the various provisions of this act, are hereby repealed, and especially the act entitled "An Act to repeal all laws and parts of laws creating drainage districts in certain portions of the parishes of Orleans, Jefferson," etc., passed March 2, 1869, generally known as the Ship Island canal bill; also, an act amendatory thereto, approved March 16, 1870.

SEC. 11. *Be it further enacted, etc.,* That it is hereby made the duty of the Board of Administrators to see that the parties whose duty it is to do the same, shall, immediately after the passage of this act, build such levees on both sides of the Carondelet canal, and the New, or Canal and Banking Company's canal, extending to Lake Pontchartrain and around their basins, as to effectually prevent the overflow of water from the said canals during storm, tides or high water in Lake Pontchartrain, the dimensions of said levees to be determined by the Board of Administrators.

SEC. 12. *Be it further enacted, etc.,* That this act shall be favorably construed, so as to favor all the purposes and objects of the same, and the operations of the provisions thereof, and shall take effect from and after its passage.

(Signed) GEO. W. CARTER,
Speaker of the House of Representatives.
(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

A true copy:

GEO. E. BOVEE,
Secretary of State.

The foregoing act, received in my office, February 24, 1871, having been presented to the Governor of the State of Louisiana

for his approval, and not having been returned by him to the House of the General Assembly in which it originated, within the time prescribed by the Constitution of the State of Louisiana, has become a law without his approval.

GEO. E. BOVEE,
Secretary of State.

ACT NO. 16.

AN ACT.

To authorize the City of New Orleans to assume exclusive control of all drainage works in the drainage districts; to authorize the purchase of certain rights and property of the Mississippi and Mexican Gulf Ship Canal Company, and its transferee; and to provide for the manner of making said purchase and for paying therefor in drainage warrants.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That the Common Council of the City of New Orleans is hereby authorized and empowered to transact and contract with the Mississippi and Mexican Gulf Ship Canal Company, and the transferee thereof, for the purchase and settlement of all or any rights, franchises, and privileges created, authorized, or arising in favor of said company or said transferee under and by virtue of Act No. 30 of Acts of 1871; also for the purchase and transfer to the City of New Orleans of all tools, implements, machines, boats and apparatus belonging to said company or its transferee, and by it or him used for or pertaining to drainage work authorized to be done by said Act No. 30.

SEC. 2. *Be it further enacted, etc.,* That should it be deemed advisable by said Council to make said purchase and settlement it shall be the duty of said Council of the City of New Orleans to provide by ordinance for the appointment of appraisers to estimate the value of the rights and things to be purchased or settled for, and the duties and powers of said appraisers shall be specifically assigned in said ordinance.

SEC. 3. *Be it further enacted, etc.,* That all amounts to be paid, when agreed upon, shall be paid in drainage warrants by the City of New Orleans, which said warrants shall be issued in the same form and manner as those heretofore issued to the trans-

26177

feree of the said company under Act No. 30 of Acts of 1871 for work done. They shall be made payable out of the drainage assessments, and shall be issued as soon as any agreement shall have been completed.

SEC. 4. *Be it further enacted, etc.,* That whenever the sale and purchase contemplated by this act shall be completed and the drainage warrants issued in payment of the price agreed on and fixed, the City of New Orleans, through its officers, shall have exclusive control of all the rights, powers and franchises granted by Act No. 30 of Acts of 1871 relative to drainage or other public works to the Mississippi and Mexican Gulf Ship Canal Company or its transferee; the City of New Orleans shall alone have the power, either through its own officers and employees or by contract to the lowest bidder, to do all canalling, dredging, ditching, or drainage work required to be paid for by assessment upon property or from the city treasury.

SEC. 5. *Be it further enacted, etc.,* That hereafter the City Council shall fix the dimensions of all canal excavations and protection levees required for the City of New Orleans.

SEC. 6. *Be it further enacted, etc.,* That all laws and parts of laws in conflict with the provisions of this act or inconsistent therewith be and are hereby repealed, and that this act take effect from and after its passage.

(Signed) E. D. ESTILETTE,
Speaker of the House of Representatives.
(Signed) C. C. ANTOINE,
Lieutenant Governor and President of the Senate.

Approved February 24, 1876.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. G. DESLONDE,
Secretary of State.